

REMARKS

The Office has required restriction in the present application as follows:

Group I – Claims 1, 2, 4, 5, 6, 15, 17, 18 and 19 drawn to a device.

Group II – Claims 10-14 and 20-22 drawn to a device.

Applicants elect, with traverse, Group I, Claims 1, 2, 4, 5, 6, 15, 17, 18 and 19 drawn to a device.

The Examiner has indicated that inventions I and II are related as combination and subcombination and in the instant case the combination as claimed does not require the particulars of the subcombination claimed because the first, second and third layers could be on top of one another.

Applicants respectfully traverse the restriction requirement on the grounds that no adequate reasons and/or examples have been provided to support a conclusion of patentable distinctness between the identified groups or shown that a burden existed searching all of the claims. While the Examiner has indicated that the first, second and third layers could be on top of one another, Applicants point out that inventions I and II both require that the third layer be located between the first and second layers. Applicants point out that this limitation is present in both Claim 4 of Group I and Claim 10 of Group II. Hence, since both the combination and subcombination requires the same limitations, the Examiner has not shown a two-way distinctness required for a combination/subcombination restriction. The restriction between these two groups is therefore considered improper and should be withdrawn.

Moreover, the M.P.E.P. § 803 states as follows:

“If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on the merits, even though it includes the claims as distinct and independent inventions.”

Applicants submit that a search of all of the claims would not impose a serious burden on the Office.

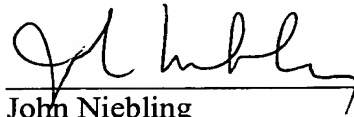
Accordingly and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain a restriction requirement. Withdrawal of the restriction requirement is respectfully requested.

Applicants point out that Claims 23-27 are pending claims, but not listed as such in the present application. Applicants respectfully request that Claims 23-27 be indicated as pending claims and added to the Group II invention.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits and early notice of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.  
Norman F. Oblon



John Niebling  
Registration No. 57,981

Customer Number

**22850**

Tel: (703) 413-3000  
Fax: (703) 413 -2220  
(OSMMN 03/06)